

CHAPTER 211

WATER AND IRRIGATION

SENATE BILL 22-028

BY SENATOR(S) Simpson and Sonnenberg, Bridges, Coram, Donovan, Jaquez Lewis, Buckner, Cooke, Fields, Gardner, Gonzales, Hisey, Holbert, Kirkmeyer, Lee, Liston, Lundeen, Pettersen, Priola, Rankin, Rodriguez, Scott, Smallwood, Story, Winter, Woodward, Zenzinger, Fenberg;
 also REPRESENTATIVE(S) Roberts and Catlin, McCormick, McKean, McLachlan, Amabile, Bird, Bockenfeld, Carver, Cutter, Esgar, Geitner, Jodeh, Kipp, Lindsay, McCluskie, Michaelson Jenet, Pelton, Pico, Rich, Sandridge, Soper, Titone, Valdez A., Valdez D., Weissman, Will, Young.

AN ACT

CONCERNING THE CREATION OF THE GROUNDWATER COMPACT COMPLIANCE AND SUSTAINABILITY FUND, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 37-60-134 as follows:

37-60-134. Groundwater compact compliance and sustainability fund - creation - conservation district recommendations for expenditures - state engineer approval - legislative declaration - transfer - definitions - reports - repeal. (1) ~~THE GENERAL ASSEMBLY HEREBY:~~

(a) FINDS AND DETERMINES THAT:

(I) GROUNDWATER WELL PUMPING IN CERTAIN AREAS OF THE STATE PROVIDES THE PRINCIPAL SOURCE OF IRRIGATION WATER SUPPLY BUT CONSEQUENTLY MAY REDUCE THE QUANTITY OF GROUNDWATER IN THE AQUIFERS AND MAY IMPACT THE HYDROGEOLOGY OF CONNECTED SURFACE STREAMS, RESULTING IN REDUCED STREAM FLOWS THAT THREATEN SENIOR WATER RIGHTS AND THE STATE'S COMPLIANCE WITH INTERSTATE COMPACTS;

(II) GROUNDWATER USE IS EXTENSIVE IN FOUR OF THE EIGHT MAJOR RIVER BASINS IN COLORADO, NAMELY THE RIO GRANDE, REPUBLICAN, ARKANSAS, AND SOUTH PLATTE RIVER BASINS, AND SUCH GROUNDWATER USE IS CLOSELY TIED TO THE AGRICULTURAL ECONOMY IN THOSE AREAS;

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(III) PREVIOUS UNITED STATES SUPREME COURT LITIGATION INITIATED IN NEIGHBORING STATES REGARDING COMPACT COMPLIANCE BY THE RIO GRANDE, ARKANSAS, AND REPUBLICAN RIVER BASINS HAVE INVOLVED COMPLAINTS REGARDING THE EXTENT OF GROUNDWATER USE IN THOSE AREAS. SETTLEMENTS OF THE LAWSUITS IN THE RIO GRANDE AND REPUBLICAN RIVER BASINS RESULTED IN THE CREATION OF WATER CONSERVATION DISTRICTS TO ADDRESS GROUNDWATER MANAGEMENT AND CONSERVATION.

(IV) DESPITE THE CONSERVATION DISTRICTS' AND THE STATE'S DILIGENT EFFORTS TO IMPLEMENT STRATEGIES TO REDUCE GROUNDWATER USE, INCLUDING THE CREATION OF SIX GROUNDWATER MANAGEMENT SUBDISTRICTS IN THE RIO GRANDE RIVER BASIN AND THE USE OF VARIOUS FEDERAL, STATE, AND LOCAL FUNDING SOURCES TO INCENTIVIZE THE PURCHASE AND RETIREMENT OF IRRIGATED ACREAGE, EXTENSIVE GROUNDWATER USE IN THE RIO GRANDE AND REPUBLICAN RIVER BASINS CONTINUES TO THREATEN AQUIFER SUSTAINABILITY, SENIOR WATER RIGHTS, AND COMPACT COMPLIANCE;

(V) AS PART OF THE EFFORTS TO REDUCE GROUNDWATER USE, THE STATE ENTERED INTO A STIPULATION WITH KANSAS AND NEBRASKA IN 2016 IN WHICH THE STATE AGREED TO RETIRE TWENTY-FIVE THOUSAND ACRES OF IRRIGATED ACREAGE IN THE REPUBLICAN RIVER BASIN BY 2029, AND, PURSUANT TO STANDARDS FOR GROUNDWATER MANAGEMENT SET FORTH IN SECTION 37-92-501 (4), THE GROUNDWATER MANAGEMENT SUBDISTRICT NUMBER 1 CREATED IN THE RIO GRANDE WATER CONSERVATION DISTRICT IS REQUIRED TO RETIRE FORTY THOUSAND ACRES OF IRRIGATED ACREAGE BY 2029;

(VI) TO DATE, ONLY ABOUT THREE THOUSAND ACRES HAVE BEEN RETIRED IN THE REPUBLICAN RIVER BASIN AND ONLY ABOUT THIRTEEN THOUSAND ACRES HAVE BEEN RETIRED IN THE RIO GRANDE RIVER BASIN; AND

(VII) IF THE ACREAGE RETIREMENT REQUIREMENTS IN THE RIO GRANDE AND REPUBLICAN RIVER BASINS ARE NOT MET, THE STATE MIGHT BE REQUIRED TO MANDATE GROUNDWATER USE REDUCTIONS FOR PRODUCTIVE FARMLAND IN THE BASINS TO ACHIEVE COMPACT COMPLIANCE, THUS THREATENING THE AGRICULTURAL ECONOMIES IN THE RIVER BASINS; AND

(b) DECLARES THAT:

(I) GREATER FUNDING IS NEEDED TO INCENTIVIZE THE RETIREMENT OF IRRIGATION WELLS AND IRRIGATED ACREAGE TO COMPLY WITH THE GROUNDWATER USE REDUCTION REQUIREMENTS;

(II) TO ACCELERATE THE STATE'S PROGRESS IN RETIRING IRRIGATED ACREAGE IN THE REPUBLICAN AND RIO GRANDE RIVER BASINS IN ORDER TO MEET STATE-MANDATED DEADLINES, A STATE FUND SHOULD BE CREATED TO PROVIDE FINANCIAL INCENTIVES AND ASSISTANCE FOR THE BUYING AND RETIRING OF IRRIGATION WELLS AND IRRIGATED ACREAGE IN THE BASINS;

(III) SUCH USE OF STATE MONEY WOULD ALSO HELP PROMOTE CONSERVATION AND SUSTAINABILITY OF GROUNDWATER RESOURCES IN FURTHERANCE OF THE STATE

WATER PLAN DEVELOPED PURSUANT TO SECTION 37-60-106.3; AND

(IV) THE BOARD SHOULD ADMINISTER THE FUND AND DISTRIBUTE MONEY FROM THE FUND BASED ON RECOMMENDATIONS OF THE BOARD OF DIRECTORS OF THE RIO GRANDE WATER CONSERVATION DISTRICT APPOINTED PURSUANT TO SECTION 37-48-103 OR THE BOARD OF DIRECTORS OF THE REPUBLICAN RIVER WATER CONSERVATION DISTRICT APPOINTED PURSUANT TO SECTION 37-50-104, WHICH RECOMMENDATIONS THE STATE ENGINEER SHOULD FIRST REVIEW.

(2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:

(a) THIS SECTION IS INTENDED TO RESPOND TO THE NEGATIVE ECONOMIC IMPACTS CAUSED BY THE COVID-19 PANDEMIC AND RESULTING PUBLIC HEALTH EMERGENCY BY PROVIDING FINANCIAL INCENTIVES FOR THE VOLUNTARY RETIREMENT OF IRRIGATED ACREAGE AND WELLS IN ORDER TO MAINTAIN INTERSTATE COMPACT COMPLIANCE AND FOR THE PROMOTION OF CONSERVATION AND SUSTAINABILITY OF GROUNDWATER RESOURCES IN FURTHERANCE OF THE STATE WATER PLAN;

(b) MONEY ALLOCATED TO THE STATE PURSUANT TO THE "AMERICAN RESCUE PLAN ACT OF 2021" AND TRANSFERRED TO THE GROUNDWATER COMPACT COMPLIANCE AND SUSTAINABILITY FUND CREATED IN SUBSECTION (3)(a) OF THIS SECTION MAY BE USED FOR THE PURPOSES OF THIS SECTION; AND

(c) THE COMPACT COMPLIANCE, GROUNDWATER RESOURCE SUSTAINABILITY, AND GROUNDWATER CONSERVATION PURPOSES DESCRIBED IN THIS SECTION ARE IMPORTANT GOVERNMENT SERVICES.

(3) (a) THE GROUNDWATER COMPACT COMPLIANCE AND SUSTAINABILITY FUND IS HEREBY CREATED IN THE STATE TREASURY AND CONSISTS OF MONEY THAT THE GENERAL ASSEMBLY MAY APPROPRIATE OR TRANSFER TO THE FUND; MONEY THAT THE STATE MAY RECEIVE FROM FEDERAL SOURCES, INCLUDING FEDERAL SOURCES OF STIMULUS FUNDING OR RECOVERY FUNDING; AND ANY GIFTS, GRANTS, OR DONATIONS THAT THE BOARD SEEKS, ACCEPTS, AND EXPENDS FOR THE PURPOSES SET FORTH IN THIS SECTION. THE MONEY IN THE FUND IS SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY.

(b) THE BOARD SHALL ADMINISTER THE FUND TO IMPLEMENT THE GROUNDWATER COMPACT COMPLIANCE AND SUSTAINABILITY PURPOSES ESTABLISHED IN ACCORDANCE WITH THIS SECTION. THE BOARD MAY USE UP TO FIVE PERCENT OF THE MONEY ANNUALLY APPROPRIATED TO THE FUND TO PAY THE BOARD'S DIRECT AND INDIRECT COSTS, AS WELL AS THE DIRECT AND INDIRECT COSTS INCURRED BY THE RIO GRANDE WATER CONSERVATION DISTRICT, THE REPUBLICAN RIVER WATER CONSERVATION DISTRICT, AND THE STATE ENGINEER IN IMPLEMENTING THIS SECTION.

(4) THE BOARD MAY DISBURSE MONEY FROM THE FUND FOR PURPOSES RELATED TO COMPACT COMPLIANCE AND GROUNDWATER RESOURCE SUSTAINABILITY AND CONSERVATION, INCLUDING THE FINANCING OF PROGRAMS DIRECTED AT BUYING AND RETIRING IRRIGATED ACREAGE TO REDUCE GROUNDWATER USE. THE BOARD OF DIRECTORS OF THE RIO GRANDE WATER CONSERVATION DISTRICT AND THE BOARD OF DIRECTORS OF THE REPUBLICAN RIVER WATER CONSERVATION DISTRICT, IN COLLABORATION WITH THE BOARD AND THE STATE ENGINEER, MAY EACH ESTABLISH

ELIGIBILITY AND APPLICATION CRITERIA FOR DISBURSEMENT OF MONEY FROM THE FUND. EACH BOARD OF DIRECTORS SHALL POST ON ITS WEBSITE ANY CRITERIA ESTABLISHED PURSUANT TO THIS SUBSECTION (4).

(5) THE BOARD SHALL DISBURSE MONEY FROM THE FUND BASED ON RECOMMENDATIONS FROM THE BOARD OF DIRECTORS OF EITHER THE RIO GRANDE WATER CONSERVATION DISTRICT OR THE REPUBLICAN RIVER WATER CONSERVATION DISTRICT, WHICH RECOMMENDATIONS MUST FIRST BE APPROVED BY THE STATE ENGINEER.

(6) IF ALL GROUNDWATER REDUCTION REQUIREMENTS ESTABLISHED BY FEDERAL OR STATE COURT ORDER OR STIPULATION HAVE BEEN MET AND ALL STATUTORILY MANDATED GROUNDWATER REDUCTION STANDARDS HAVE BEEN ACHIEVED, THIS SECTION WILL BE REPEALED; EXCEPT THAT THIS SECTION SHALL NOT BE REPEALED BEFORE JANUARY 1, 2025. THE BOARD SHALL NOTIFY THE REVISOR OF STATUTES IN WRITING OF THE DATE WHEN THE CONDITIONS SPECIFIED IN THIS SUBSECTION (6) HAVE OCCURRED BY EMAILING THE NOTICE TO REVISOROFSTATUTES.GA@STATE.CO.US. THE BOARD SHALL ALSO SEND A COPY OF THE NOTICE TO THE STATE TREASURER WHO, WITHIN THREE DAYS AFTER RECEIVING THE NOTICE, SHALL TRANSFER ANY MONEY REMAINING IN THE FUND TO THE GENERAL FUND. THIS SECTION IS REPEALED, EFFECTIVE UPON THE DATE IDENTIFIED IN THE NOTICE OR, IF THE NOTICE DOES NOT SPECIFY THAT DATE, UPON THE DATE OF THE NOTICE TO THE REVISOR OF STATUTES.

(7) (a) FOR THE 2022-23 STATE FISCAL YEAR, THE GENERAL ASSEMBLY SHALL APPROPRIATE TO THE FUND SIXTY MILLION DOLLARS FROM THE ECONOMIC RECOVERY AND RELIEF CASH FUND CREATED IN SECTION 24-75-228 (2)(a). THE BOARD MAY USE THE MONEY APPROPRIATED FOR THE PURPOSES SET FORTH IN THIS SECTION. EXCEPT AS PROVIDED IN SUBSECTION (7)(b) OF THIS SECTION, ANY MONEY APPROPRIATED TO THE FUND IN THE 2022-23 STATE FISCAL YEAR THAT IS UNOBLIGATED OR UNEXPENDED AT THE END OF THE STATE FISCAL YEAR REMAINS AVAILABLE FOR EXPENDITURE BY THE BOARD IN SUBSEQUENT STATE FISCAL YEARS WITHOUT FURTHER APPROPRIATION, SUBJECT TO THE REQUIREMENTS FOR OBLIGATING AND EXPENDING MONEY RECEIVED UNDER THE "AMERICAN RESCUE PLAN ACT OF 2021", AS SPECIFIED IN SECTION 24-75-226 (4)(d).

(b) ON AUGUST 15, 2024, IF THERE IS UNOBLIGATED MONEY IN THE FUND, THE STATE TREASURER SHALL:

(I) IF THE AMOUNT OF UNOBLIGATED MONEY IS TWENTY MILLION DOLLARS OR LESS, TRANSFER ALL OF THE UNOBLIGATED MONEY TO THE WATER PLAN IMPLEMENTATION ACCOUNT; OR

(II) IF THE AMOUNT OF UNOBLIGATED MONEY IS GREATER THAN TWENTY MILLION DOLLARS, TRANSFER TO THE WATER PLAN IMPLEMENTATION ACCOUNT TWENTY MILLION DOLLARS.

(8) (a) THE BOARD AND ANY PERSON THAT RECEIVES MONEY FROM THE BOARD PURSUANT TO THIS SECTION OR SECTION 37-60-123.3 (3) SHALL COMPLY WITH THE COMPLIANCE, REPORTING, RECORD-KEEPING, AND PROGRAM EVALUATION REQUIREMENT ESTABLISHED BY THE OFFICE OF STATE PLANNING AND BUDGETING

AND THE STATE CONTROLLER IN ACCORDANCE WITH SECTION 24-75-226 (5).

(b) COMMENCING IN 2023, AND FOR EACH YEAR THEREAFTER THROUGH 2027, AS PART OF ITS ANNUAL PRESENTATIONS TO THE GENERAL ASSEMBLY UNDER THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART) GOVERNMENT ACT", PART 2 OF ARTICLE 7 OF TITLE 2, THE DEPARTMENT OF NATURAL RESOURCES SHALL REPORT ON HOW MUCH MONEY THE BOARD HAS EXPENDED UNDER THIS SECTION AND IF THE BOARD EXPECTS TO EXPEND THE FULL SIXTY MILLION DOLLARS FOR THE PURPOSES SET FORTH IN THIS SECTION OR, IF MONEY IS TRANSFERRED TO THE WATER PLAN IMPLEMENTATION ACCOUNT IN 2024, IF THE BOARD IS ON TRACK TO EXPEND THE FULL SIXTY MILLION DOLLARS FOR THE PURPOSES SET FORTH IN THIS SECTION AND THE PURPOSES SET FORTH IN SECTION 37-60-123.3 (3).

(9) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "AMERICAN RESCUE PLAN ACT OF 2021" MEANS THE FEDERAL "AMERICAN RESCUE PLAN ACT OF 2021", PUB.L. 117-2, AS THE ACT MAY BE SUBSEQUENTLY AMENDED.

(b) "COVID-19" MEANS THE CORONAVIRUS DISEASE CAUSED BY THE SEVERE ACUTE RESPIRATORY SYNDROME CORONAVIRUS 2, ALSO KNOWN AS SARS-CoV-2.

(c) "FUND" MEANS THE GROUNDWATER COMPACT COMPLIANCE AND SUSTAINABILITY FUND CREATED IN SUBSECTION (3)(a) OF THIS SECTION.

(d) "WATER PLAN IMPLEMENTATION ACCOUNT" MEANS THE WATER PLAN IMPLEMENTATION ACCOUNT CREATED IN SECTION 37-60-123.3 (3)(b).

SECTION 2. In Colorado Revised Statutes, 37-60-123.3, **add** (3) as follows:

37-60-123.3. Water plan implementation cash fund - created - water plan implementation account - created - legislative declaration - reporting - repeal.

(3) (a) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(I) THIS SUBSECTION (3) IS INTENDED TO RESPOND TO THE NEGATIVE ECONOMIC IMPACTS CAUSED BY THE COVID-19 PANDEMIC, AS DEFINED IN SECTION 37-60-134 (9)(b), AND THE RESULTING PUBLIC HEALTH EMERGENCY BY PROVIDING GRANT MONEY TO PROMOTE PROJECTS AND ACTIONS THAT ADVANCE PROGRESS TOWARD ACCOMPLISHING THE CRITICAL ACTIONS IDENTIFIED IN THE STATE WATER PLAN;

(II) MONEY ALLOCATED TO THE STATE PURSUANT TO THE "AMERICAN RESCUE PLAN ACT OF 2021", AS DEFINED IN SECTION 37-60-134 (9)(a), AND TRANSFERRED TO THE WATER PLAN IMPLEMENTATION ACCOUNT MAY BE USED FOR THE PURPOSES OF THIS SUBSECTION (3); AND

(III) THE WATER PLAN IMPLEMENTATION PURPOSES DESCRIBED IN THIS SUBSECTION (3) ARE IMPORTANT GOVERNMENT SERVICES.

(b) THERE IS HEREBY CREATED IN THE WATER PLAN IMPLEMENTATION CASH FUND THE WATER PLAN IMPLEMENTATION ACCOUNT, REFERRED TO IN THIS SUBSECTION (3)

AS THE "ACCOUNT". THE MONEY IN THE ACCOUNT IS CONTINUOUSLY APPROPRIATED TO THE BOARD TO USE FOR THE PURPOSES SET FORTH IN THIS SUBSECTION (3).

(c) THE ACCOUNT CONSISTS OF ALL MONEY TRANSFERRED TO THE ACCOUNT ON AUGUST 15, 2024, FROM THE GROUNDWATER COMPACT COMPLIANCE AND SUSTAINABILITY FUND CREATED IN SECTION 37-60-134 (3)(a).

(d) THE BOARD AND ANY PERSON THAT RECEIVES MONEY FROM THE BOARD PURSUANT TO THIS SUBSECTION (3) SHALL COMPLY WITH THE COMPLIANCE, REPORTING, RECORD-KEEPING, AND PROGRAM EVALUATION REQUIREMENT ESTABLISHED BY THE OFFICE OF STATE PLANNING AND BUDGETING AND THE STATE CONTROLLER IN ACCORDANCE WITH SECTION 24-75-226 (5).

(e) THIS SUBSECTION (3) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2027.

SECTION 3. Appropriation. (1) For the 2022-23 state fiscal year, \$60,000,000 is appropriated to the groundwater compact compliance and sustainability fund created in section 37-60-134 (3)(a), C.R.S. This appropriation is from the economic recovery and relief cash fund created in section 24-75-228 (3)(a), C.R.S., and is of money the state received from the federal coronavirus state fiscal recovery fund. The Department of Natural Resources is responsible for the accounting related to this appropriation.

(2) For the 2022-23 state fiscal year, \$60,000,000 is appropriated to the department of natural resources for use by the Colorado water conservation board. This appropriation is from reappropriated funds from the groundwater compact compliance and sustainability fund under subsection (1) of this section. To implement this act, the board may use this appropriation for compact compliance and groundwater resource sustainability and conservation pursuant to section 37-60-134, C.R.S. Any money appropriated in this section not expended prior to July 1, 2023, is further appropriated to the board from July 1, 2023, through December 30, 2024, for the same purpose.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: May 23, 2022